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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,821	07/01/2003	Steven Tsengas	1024	3013

7590 09/27/2004

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/611,821

Applicant(s)

TSENGAS, STEVEN

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,339,771 to Axelrod.

Regarding Claim 1, Axelrod teaches a pet mastication article with a micro-porous body; and enriching agent impregnated into the body (Col. 2 line 40-54).

Regarding Claim 3, Axelrod teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (Col. 2 line 11).

Regarding Claim 4, Axelrod teaches the enriching agent is a dietary vitamin (Col. 1 line 53).

Regarding Claim 5, Axelrod teaches the enriching agent is a dietary mineral (Col. 1 line 53).

Regarding Claim 6, Axelrod teaches the enriching agent is an anti-microbial agent for combating microbial agents that cause illness and disease (Col. 1 line 37).

Regarding Claim 7, Axelrod teaches the enriching agent is a flavor enhancer (Col. 1 line 25).

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claim 1, Denesuk teaches a pet mastication article with a micro-porous body (Figs. 1, 2, 4); and enriching agent impregnated into the body (abstract).

Regarding Claim 2, Denesuk teaches the body comprises a raw bone (Fig. 1 and Col. 4 line 58).

Regarding Claim 3, Denesuk teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (Col. 4 line 3 and 26).

Regarding Claim 4, Denesuk teaches the enriching agent is a dietary vitamin (Col. 4 line 27-28).

Regarding Claim 5, Denesuk teaches the enriching agent is a dietary mineral (Col. 3 line 66 and Col. 4 line 25-31).

Regarding Claim 6, Axelrod teaches the enriching agent is an anti-microbial agent for combating microbial agents that cause illness and disease (Col. 1 line 19 and 52).

Regarding Claim 7, Denesuk teaches the enriching agent is a flavor enhancer (Col. 4 line 25-31).

Claims 1, 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,771,733 to Axelrod.

Regarding Claim 1, Axelrod teaches a pet mastication article with a micro-porous body; and enriching agent impregnated into the body (abstract).

Regarding Claim 3, Axelrod teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (abstract).

Regarding Claim 7, Axelrod teaches the enriching agent is a flavor enhancer (abstract).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,771,733 to Axelrod in view U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claim 2, Axelrod does not explicitly teach the body comprises a raw bone (Fig. 1). However, Denesuk teaches it is old and notoriously well-known to apply enriching agents to either plastic or raw matter (Denesuk Fig. 1, 2 and 4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the impregnation of an alternate equivalent known mastication material as a manufacturing design choice based on availability of raw materials and efficient manufacturing practices. (Any table scraps feed to an animal inherently will be impregnated with enriching agents depending how the food

was cooked or seasoned and it is notoriously well-known that animals eat table scraps and out of garbage cans).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,339,771 to Axelrod in view of U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claim 2, Axelrod does not explicitly teaches the body comprises a raw bone (Fig. 1). However, Denesuk teaches it is old and notoriously well-known to apply enriching agents to either plastic or raw matter (Denesuk Fig. 1, 2 and 4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the impregnation of an alternate equivalent known mastication material as a manufacturing design choice based on availability of raw materials and efficient manufacturing practices. (Any table scraps feed to an animal inherently will be impregnated with enriching agents depending how the food was cooked or seasoned and it is notoriously well-known that animals eat table scraps and out of garbage cans).

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,771,733 to Axelrod in view of U.S. Patent No. 5,339,771 to Axelrod.

Regarding Claims 4, 5, and 6, Axelrod '733 is silent on the enriching agent is a dietary vitamin; a dietary mineral; and an anti-microbial agent for combating microbial agents that cause illness and disease. However, Axelrod '771 teaches that it is old and notoriously well-known to impregnate dog bones with vitamins, minerals, and anti-

microbial agent (Axelrod '771 Col. 1 line 37 and 53). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the application of additional known additives for the known health advantages.

### ***Response to Arguments***

Applicant's arguments filed 12 July 2004 have been fully considered but they are not persuasive.

Regarding U.S. Patent No. 5,339,771 to Axelrod, examiner maintains that since Axelrod teaches a polyurethane (i.e. plastic) material it inherently is micro-porous. Applicant's specification, page 6 line 12-13, indicated that it is well-known that a plastic material of this nature is micro-porous. The old and notoriously well-known mastication additives taught by Axelrod inherently fill these pores (or in other words impregnate) during processing of the device. Axelrod teaches it is known to add enriching agents to a mastication device (Col. 1 line 53) for the enhanced benefit to the animal consuming it. Also, the example provided by Axelrod teaches chicken meal which inherently contains enriching vitamin and mineral agents. Therefore, examiner maintains that Axelrod does in fact teach each and every element and applicant has not distinguished over the teachings of the cited prior art.

Regarding U.S. Patent No. 4,771,733 to Axelrod, this patent teaches that the enriching agent is **absorbed** into the polyurethane so the polyurethane is inherently micro-porous. Examiner maintains that there is motivation to modify the teachings of '733 with the teachings of '771 for the added health benefits. Examiner would like to

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bring attention an additional patent by Axelrod, U.S. Patent No. 5,476,069 (Col. 2 line 40-41), which teaches the addition of vitamins and minerals is not a combination made in hindsight, but rather knowledge within the level of one of ordinary skill in the art. One of ordinary skill would be motivated to make the modification to provide a more healthy diet for the animal and to provide good sanitary conditions.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.




If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

13 September 2004

  
Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600